any afterborn child and would therefore be void, if there were only a single power. But he came to the conclusion that there were two powers, one to pay to the nephew, which was necessarily confined to his life and consequently valid, the other to apply for the benefit of him or his wife or children, which might be exercised at a time too remote and was therefore void. J. L. T.

RECENT CASES.

AGENCY — AGENT'S LIABILITY TO THIRD PERSONS — PARTIES TO WRITINGS: PAROL EVIDENCE TO EXONERATE AGENT. — The plaintiff and the defendant entered into a written contract with the oral understanding that the contract was between the plaintiff and the defendant's principal. *Held*, that parol evidence is not admissible to exonerate the defendant. *Gordon Malting Co.* v. *Bartels Brewing Co.*, 206 N. Y. 528, 100 N. E. 457.

When the parties to a contract have embodied the terms in a written agreement, parol evidence is in general inadmissible to show that the actual agreement was otherwise. *Van Syckel* v. *Dalrymple*, 32 N. J. Eq. 233. See 4 WIGMORE, EVIDENCE, § 2425. Under the facts of the principal case, therefore, the agent cannot show that he was to be free from personal liability. *Nash* v. *Towne*, 5 Wall. (U. S.) 689; *Cream City Glass Co.* v. *Friedlander*, 84 Wis. 53. See *Higgins* v. *Senior*, 8 M. & W. 834, 844. If there is any ambiguity on the face of the instrument as to the rôle in which the agent acts, it is explainable. *Kean* v. *Davis*, 21 N. J. L. 683; *Armstrong* v. *Andrews*, 109 Mich. 537, 67 N. W. 567. And if agents in signing their own names carried the fiction of agency so far as actually to denote their principals thereby, the evidence might be admissible to construe the meaning of the signature. *Cf. Myers* v. *Sarl*, 3 El. & El. 306. But it would not seem that agents do so use their names. Force is lent to the suggestion, however, by the admission of evidence to charge the principal under the same facts. *Calder* v. *Dobell*, L. R. 6 C. P. 486; *Lerned* v. *Johns*, 91 Mass. 419. *Contra*, *Chandler* v. *Coe*, 54 N. H. 561. But evidence of collateral agreements is admissible if the written document is one which might naturally not include that agreement and was not so intended. If the parties intended a double liability, they might be likely not to seek to bind both principal and agent on the same document. Evidence that the principal was also to be bound on the contract can be properly admissible only on this ground.

AGENCY — PRINCIPAL'S LIABILITY FOR ACTS OF INDEPENDENT CONTRACTOR — LIABILITY FOR NEGLIGENT BLASTING. — An independent contractor was engaged in blasting on the defendant's land. Due to his negligence rocks were hurled upon the plaintiff's land. *Held*, that the plaintiff may recover from the landowner. *Hounsome* v. *Vancouver Power Co.*, 23 West. L. Rep. 167. (Brit. Col., Ct. App.)

Under the English rule of absolute liability for injury caused by the escape of anything brought onto his land, an owner is liable even though the escape was caused by the act of an independent contractor. *Rylands* v. *Fletcher*, L. R. 3 H. L. 330. Such a broad rule would cover this case. But in many jurisdictions in this country this absolute liability is not recognized. *Marshall* v. *Wellwood*, 38 N. J. L. 339; *McCafferty* v. *Spuyten Duyvil & P. M. R. Co.*, 61 N. Y. 178. When, indeed, the act of the contractor is such that the injury flows directly and necessarily from this act, the owner is liable in trespass, without regard to negligence. *Hay* v. *Cohoes Co.*, 2 N. Y. 159; *Hoffman* v. *Walsh*, 117 Mo. App. 278, 93 S. W. 853. But otherwise, by the weight of authority, and

rightly it seems, it is not the trespass of the owner and he is not liable. *Ketcham* v. *Newman*, 141 N. Y. 205, 36 N. E. 197; *Tibbets* v. *Knox & Lincoln R. Co.*, 62 Me. 437. The same reasoning applies where the owner is sought to be held for damage from a nuisance created by the contractor. *Atlanta & F. R. Co.* v. *Kimberly*, 87 Ga. 161, 13 S. E. 277; *Bailey* v. *Troy & Boston R. Co.*, 57 Vt. 252. See *Jones* v. *McMinimy*, 93 Ky. 471, 473, 20 S. W. 435. It might seem reasonable to hold a landowner to the use of due care in the management of his property and require him to answer for the negligence of any to whom he might entrust the performance of that duty. Such a view, however, has not in general found favor with the courts. *Berg* v. *Parsons*, 156 N. Y. 109, 50 N. E. 957; *Blumb* v. *City of Kansas*, 84 Mo. 112. But in a narrower class of cases, where the work is commonly said to be inherently dangerous, this principle has been generally accepted. *Norwalk Gaslight Co.* v. *Borough of Norwalk*, 63 Conn. 495, 28 Atl. 32; *Wetherbee* v. *Partridge*, 175 Mass. 185, 55 N. E. 894; *Davis* v. *Summerfield*, 133 N. C. 325, 45 S. E. 654. *Contra*, *McCafferty* v. *Spuyten Duyvil & P. M. R. Co.*, *supra*. It is said in these cases that the owner must use care to prevent the probable consequences of dangerous acts, but it amounts in substance to a liability for the contractor's negligent performance of the duty delegated to him. Such a rule has convincing arguments of policy to commend it; it would explain the blasting cases, and sufficiently protect neighboring owners from dangerous undertakings.

BAILMENTS — BAILOR AND BAILEE — WHAT CONSTITUTES CONTRACT LIMITING LIABILITY. — The plaintiff checked a package in the defendant's parcel room. On the back of the claim check was a notice, unseen by the plaintiff, limiting the defendant's liability to ten dollars. The parcel was negligently misdelivered by the defendant's servant. *Held*, that the plaintiff can recover full damages. *Healy* v. *New York Central & Hudson River R. Co.*, 153 N. Y. App. Div. 516.

While a bailee can limit his liability by contract, there are several views as to when this limitation becomes a term of the contract. In England, at common law, any notice to the bailor was held to be embodied in the agreement. *Wyld* v. *Pickford*, 8 M. & W. 443. In the United States mere notice has not this effect. *Judson* v. *Western R. Co.*, 6 Allen (Mass.) 486. Some courts hold the bailor bound contractually only by such limitations as he actually consents to. *Chicago & Northwestern Ry. Co.* v. *Simon*, 160 Ill. 648, 43 N. E. 596. But by the weight of authority if the bailee's receipt is of such a nature that it is generally known to embody the terms of the contract, the bailor is presumed to know and assent to these terms. *Taussig* v. *Bode*, 134 Cal. 260, 66 Pac. 259; *Durgin* v. *American Express Co.*, 66 N. H. 277, 20 Atl. 328. Some courts intimate that this presumption can be rebutted. *Rawson* v. *Pennsylvania R. Co.*, 48 N. Y. 212. See *Boorman* v. *American Express Co.*, 21 Wis. 152, 158. A person signing an unread contract is conclusively bound by its terms. *Fivey* v. *Pennsylvania R. Co.*, 67 N. J. L. 627, 52 Atl. 472. It would seem by analogy, therefore, that merely accepting a receipt of a kind generally known to contain the terms of the contract of bailment, should bind the bailor to these terms. *Taussig* v. *Bode*, *supra*. As a parcel-room check hardly falls within this description, the limitation on the back should not be a term of the bailment. *Cf. Blosson* v. *Dodd*, 43 N. Y. 264.

BILLS AND NOTES — DOCTRINE OF PRICE *v.* NEAL. — A testatrix had given money to her agent in trust to terminate a city assessment lien against property devised by her to the defendant. An employee of the agent misappropriated a check given him to carry out the direction of the testatrix, and later forged a check on the plaintiff bank payable to the city collector, with which the assessments were paid and the lien discharged. Upon discovering the forgery, the